

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TROY MURPHY,

Plaintiff,

v.

**Civil Action No. 2:07cv23
(Judge Maxwell)**

FEDERAL CORRECTION INSTITUTION GILMER, “et al”,

Defendants.

ORDER DENYING MOTION FOR MODIFICATION OF FEE

On March 9, 2007, *pro se* plaintiff, Troy Murphy, initiated this action as a Bivens complaint and Federal Tort Claims Act.. On March 20, 2007, the undersigned granted plaintiff’s Motion For Leave to Proceed *in forma pauperis*. On August 28, 2007, the plaintiff filed his pending motion seeking modification of the payment plan for his filing fees. In support of his motion, the plaintiff states that he cannot afford the rate set by the court.

As the order granting the plaintiff’s request for *in forma pauperis* status noted, 28 U.S.C. § 1915 requires prisoners to pay the full filing fee, \$350.00, when bringing a civil action in forma pauperis. 28 U.S.C. § 1915 (b)(1) (1996). In addition, that statute provides that, if insufficient funds exist in the prisoner’s account to pay the full filing fee at the time of filing, the court must assess and, when funds exist, collect an initial filing fee of twenty percent (20%) of the greater of the average monthly deposits to the prisoner’s account or the average monthly balance in the prisoner’s account for the prior six month period. Thereafter, pursuant to that same statute, the prisoner is required to make monthly payments of twenty percent (20%) of the preceding month’s income.

Therefore, this Court did not set “set the payment plan” for the plaintiff, but simply applied the requirements set by statute, and it has no authority to modify the same.

Accordingly, plaintiff’s Motion for Modification of Fee (Doc.13) is **DENIED**.

IT IS SO ORDERED.

The Clerk of the Court is directed to mail a copy of this Order to the *pro se* petitioner and any counsel of record.

DATED: October 16, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE